IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ELTRINA and DARRELL MCCRAY, husband and wife,	)	
	)	No. 61715-0-I
Appellants,	)	DIVISION ONE
v.	)	UNPUBLISHED OPINION
CHARLES and VANESSA DOUGLAS, individually and their community property; and CADMIUM, INC., a Washington corporation; and DOUGLAS FINANCIAL SERVICES; and LANDRY GROUP FIRM, INC.	)	
Respondents.	)	FILED: June 15, 2009

APPELWICK, J. — The McCrays appeal the trial court's denial of their motion to vacate an arbitrator's award following mandatory arbitration. Because the McCrays failed to file a proper request for a trial de novo, which is the sole way to appeal an erroneous ruling from mandatory arbitration, we affirm.

FACTS

In April 2005, Eltrina and Darrell McCray filed a lawsuit seeking damages and injunctive relief against Charles and Vanessa Douglas; Cadmium, Inc.; Douglas Financial Services; and the Landry Group Firm, Inc. The McCrays alleged that the defendants had filed a fraudulent lien against their property, based on a proposed loan of $9,300.00 that the defendants had offered but the McCrays rejected. In May 2005, the McCrays agreed to deposit $27,900 in escrow, pending the resolution of the case, and the trial court ordered the release of the defendants' lien on the McCray property. In September 2006, the trial court transferred the case to mandatory arbitration.

On November 28, 2007, the McCrays' attorney sent a letter to the assigned arbitrator requesting a continuance "for a date uncertain until [defense counsel] or the Plaintiffs contact you within four (4) weeks" and indicating that he was withdrawing as counsel for the McCrays effective December 21, 2007, as a result of his election to public office. The arbitrator responded by letter, dated December 6, 2007, stating that he was "not authorized to leave the arbitration hearing date open," but would continue the hearing until January 24, 2008.

The McCrays did not appear for the January 24 arbitration hearing. On January 28, the arbitrator filed an award stating: "Plaintiffs' Complaint and all claims therein are dismissed with prejudice. Defendants, Charles and Vanessa Douglas, are awarded $9,102.75 in attorney fees and costs." On January 30, the defendants filed a motion to distribute the funds in escrow, seeking $18,402.72 based on the amount of the original lien in addition to the arbitrator's

award of attorney fees and costs.

On February 6, pro se, the McCrays filed a hand written "Motion for Vacate Judgement of Arbitrator" stating:

> Plaintiff brings this motion to vacate Judgement of Arbitrator that was entered on Jan[.] 24, 2008. Plaintiffs did not receive any notice of the hearing and therefore were unable to attend and present case to Arbitrator. Plaintiffs ask the Court to remand case back to arbitrator to set a new hearing date.
>
> I am asking the court to vacate the entire order that was entered on January 24, 2008. The order was entered against the Plaintiffs because the Plaintiffs did not appear. Plaintiffs received no notice and was [sic] not informed of their need for appearance. Plaintiffs are asking for another arbitration date to present case.

(capitalization omitted). The McCrays also filed a "Motion for Response to Defendant's Motion to Disburse Funds Held in Escrow" on the same day asking the court to set "a new arbitration date." (capitalization omitted).

On February 12, the trial court ordered the escrow company to distribute $18,402.72 to the defendants. On March 25, after considering additional briefing by the McCrays' new counsel and hearing argument by both counsel, the trial court denied the McCrays' motion to vacate the arbitration award. The McCrays appeal.

DISCUSSION

The Mandatory Arbitration Rules (MAR) apply to mandatory arbitration of civil actions under chapter 7.06 RCW.[1] Interpretation of the MAR is a matter of law requiring de novo review.[2]

[1] MAR 1.1.
[2] Nevers v. Fireside, Inc., 133 Wn.2d 804, 809, 947 P.2d 721 (1997).

If a party fails to appear at an arbitration hearing, MAR 5.4 provides that "[t]he arbitrator, for good cause shown, may allow an absent party an opportunity to appear at a subsequent hearing before making an award. A party who fails to participate without good cause waives the right to a trial de novo."

RCW 7.06.050[3] provides that within 20 days after the arbitrator files his decision, any aggrieved party may file a written notice of appeal and notice for a trial de novo in the superior court. MAR 7.1(a) states in pertinent part:

> Within 20 days after the arbitration award is filed with the clerk, any aggrieved party not having waived the right to appeal may serve and file with the clerk a written request for a trial de novo in the superior court along with proof that a copy has been served upon all other parties appearing in the case. . . . The request for a trial de novo . . . shall be in substantially the form set forth below:
> . . .
>
> TO: The clerk of the court and all parties:
>
> Please take notice that [name of aggrieved party] requests a trial de novo from the award filed [date].

(alteration in original).

Our Supreme Court has held that "the sole way to appeal an erroneous ruling from mandatory arbitration is the trial de novo."[4] A request for a trial de

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[3] RCW 7.06.050 states in pertinent part:

> (1) Following a hearing as prescribed by court rule, the arbitrator shall file his decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. Such trial de novo shall thereupon be held, including a right to jury, if demanded.
> . . .
> (2) If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment shall be entered and may be presented to the court by any party, on notice, which judgment when entered shall have the same force and effect as judgments in civil actions.

[4] Malted Mousse, Inc. v. Steinmetz, 150 Wn.2d 518, 529, 79 P.3d 1154 (2003).

novo is not substantially in the form as provided in the rules, and is therefore ineffective, "if it seeks relief outside the trial court's jurisdiction."[5] Substantial compliance with MAR 7.1(a) is insufficient even where a party prevailing at arbitration "knew there would be a trial de novo and no prejudice attached."[6]

The McCrays contend that MAR 5.4 and MAR 7.1(a) together provide the right to request a subsequent arbitration hearing or a trial de novo or both, and that the trial court should have construed their pro se motion as a proper request for relief. We disagree. MAR 5.4 plainly states that the "*arbitrator* . . . may allow . . . a subsequent hearing *before making an award*." (emphasis added). Because the McCrays' motion was not directed to the arbitrator and because they did not request a subsequent hearing before the arbitrator made his award, it could not be considered a proper request for relief under MAR 5.4.

After the arbitrator filed the award, the McCrays' sole remedy was to request a trial de novo "in substantially the form" provided in MAR 7.1(a). Because the McCrays' motion requested "remand . . . to arbitrator to set a new hearing date" and "another arbitration date," rather than a trial de novo, it failed to strictly comply with the requirements of MAR 7.1(a) and the trial court lacked authority to grant the requested relief.

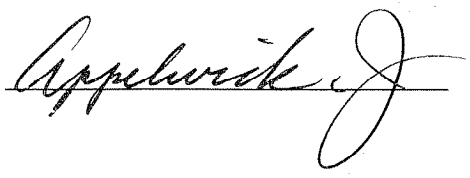
The McCrays' reliance on CR 60 is also misplaced. CR 60 provides only limited relief from a judgment on an arbitration award, allowing a challenge only

[5] Malted Mousse, 150 Wn.2d at 534.
[6] Wiley v. Rehak, 143 Wn.2d 339, 346, 20 P.3d 404 (2001) (failure to name aggrieved party in notice for trial de novo due to scrivener's error was not inconsequential error but a failure to strictly comply with MAR requirements).

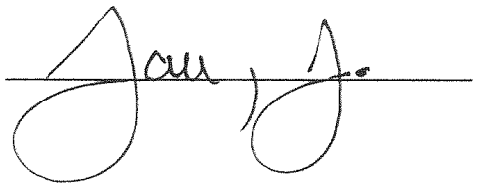
"'on the grounds of a defect inherent in the judgment itself or in the means (i.e., "the court proceedings") by which it was obtained.'"[7] At the time the McCrays filed their motion, the trial court had not yet entered a judgment on the award. Because CR 60 cannot be used to circumvent the requirements of MAR 7.1(a), the trial court properly denied the McCrays' motion.[8]

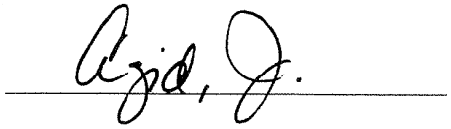
The McCrays contend that strictly applying MAR 7.1(a) to deny their motion abridges their right to a jury trial in violation of article I, section 21 of the Washington State Constitution and RCW 7.06.70.[9] But failure to comply with the requirements of MAR 7.1 constitutes waiver of the right to a jury trial.[10] Here, the McCrays' failure to follow the rules of mandatory arbitration constituted a waiver of their right to trial.

Affirmed.



WE CONCUR:





[7] Wiley, 143 Wn.2d at 347 (quoting ML Park Place Corp. v. Hedreen, 71 Wn. App. 727, 743, 862 P.2d 602 (1993)).
[8] Wiley, 143 Wn.2d at 347.
[9] RCW 7.06.070 provides: "No provision of this chapter may be construed to abridge the right to trial by jury."
[10] Kim v. Pham, 95 Wn. App. 439, 445, 975 P.2d 544 (1999) (party failing to comply with MAR 7.1 "is not entitled to a trial de novo by jury or otherwise").